

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

ANTHONY KAMEL, LINNEA MENIN,
JASMINE OTTE, JENNIFER SCHOFIELD

Plaintiffs,

v.

ALBERTSONS COMPANIES, INC.

Defendant.

Case No.

CLASS ACTION COMPLAINT

Plaintiffs Anthony Kamel, Linnea Menin, Jasmine Otte, and Jennifer Schofield (“Plaintiffs”), each on his or her own behalf and, collectively, on behalf of all others similarly situated (the putative “Class”), make the following allegations based on their personal knowledge of their own acts and observations and, otherwise, upon information and belief based on investigation of counsel.

INTRODUCTION

1. Plaintiffs, individually and as class representatives for all others similarly situated, bring this action against Defendant for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and its enabling statutes, 47 C.F.R. §§ 64.1200(c) and (d), and the Florida Telephone Solicitation Act (“FTSA”), Fla. Stat. § 501.059.

2. To promote its goods and services, Defendant routinely engages in text messaging campaigns and continues to text message consumers even after they have opted out of Defendant’s solicitations. Defendant also engages in telemarketing without the required policies and procedures, and training of its personnel engaged in telemarketing.

3. “Telemarketing calls are intrusive. A great many people object to these calls, which interfere with their lives, tie up their phone lines, and cause confusion and disruption on phone records. Faced with growing public criticism of abusive telephone marketing practices, Congress enacted the Telephone Consumer Protection Act of 1991. Pub. L. No. 102-243, 105 Stat. 2394 (1991) (codified at 47 U.S.C. § 227). As Congress explained, the law was a response to Americans ‘outraged over the proliferation of intrusive, nuisance calls to their homes from telemarketers’ *id.* § 2(6), and sought to strike a balance between ‘[i]ndividuals’ privacy rights, public safety interests, and commercial freedoms’ *id.* § 2(9).

4. “The law opted for a consumer-driven process that would allow objecting individuals to prevent unwanted calls to their homes. The result of the telemarketing regulations was the national Do-Not-Call registry. *See* 47 C.F.R. § 64.1200(c)(2). Within the federal government’s web of indecipherable acronyms and byzantine programs, the Do-Not-Call registry stands out as a model of clarity. It means what it says. If a person wishes to no longer receive telephone solicitations, he can add his number to the list. The TCPA then restricts the telephone solicitations that can be made to that number. *See id.*; 16 C.F.R. § 310.4(b)(iii)(B) (‘It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to . . . initiat[e] any outbound telephone call to a person when . . . [t]hat person’s telephone number is on the “do-not-call” registry, maintained by the Commission.’). Private suits can seek either monetary or injunctive relief. *Id.* This private cause of action is a straightforward provision designed to achieve a straightforward result. Congress enacted the law to protect against invasions of privacy that were harming people. The law empowers each person to protect his own personal rights. Violations of the law are clear, as is the remedy. Put simply, the TCPA affords relief to those persons who, despite

efforts to avoid it, have suffered an intrusion upon their domestic peace.” *Krakauer v. Dish Network, L.L.C.*, 925 F.3d 643, 649-50 (4th Cir. 2019).

5. Through this action, Plaintiffs seek injunctive relief to halt Defendant’s unlawful conduct, which has resulted in the invasion of privacy, harassment, aggravation, and disruption of the daily life of Plaintiffs and the Class members. Plaintiffs also seeks statutory damages on behalf of themselves and members of the Class, as well as any other available legal or equitable remedies

PARTIES

6. Plaintiffs Anthony Kamel, Linnea Menin, Jasmine Otte and Jennifer Schofield are each individual persons and called parties under the TCPA and FTSA.

7. Defendant Albertson Companies, Inc. (“Albertsons”), is a Delaware corporation whose principal offices are located in Boise, Idaho, and whose Registered Agent for service of process in the State of Idaho is CT Corporation System, 1555 W Shoreline Dr., Ste. 100, Boise, ID 83702.

8. Albertsons is one of the largest food and drug retailers in the United States, with over 2,200 stores in 34 states and the District of Columbia. Albertsons Companies’ banners include Albertsons, Safeway, Vons, Jewel-Osco, Shaw's, Acme, Tom Thumb, Randalls, United Supermarkets, Pavilions, Star Market, Haggen, Carrs, Kings Food Markets, and Balducci's Food Lovers Market.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this matter under Fla. Stat. § 26.012 because the amount in controversy exceeds \$50,000.

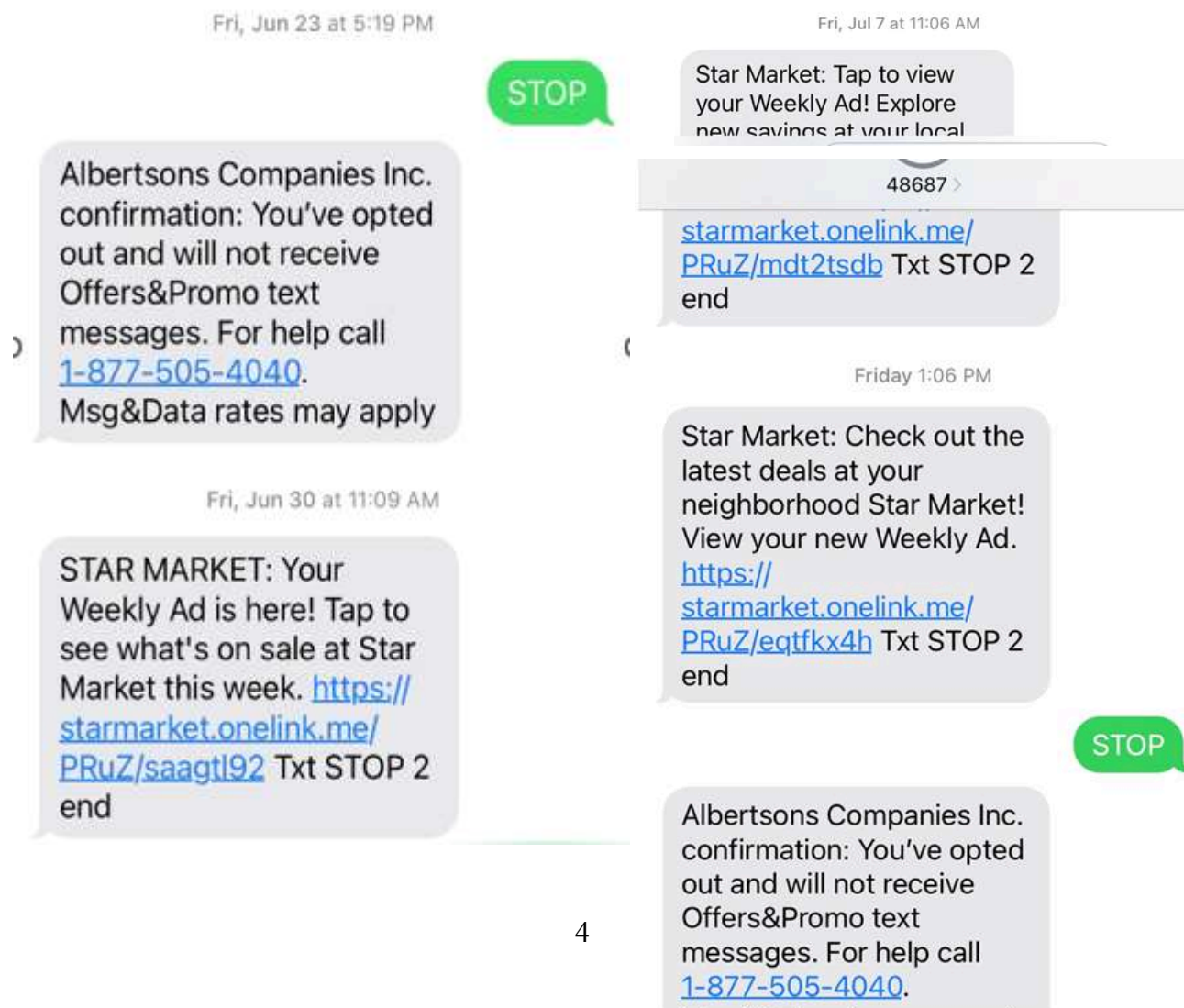
10. With respect to TCPA claims, this Court has subject matter jurisdiction under 47 U.S.C. § 227(c)(5) which states, “A person who has received more than one telephone call within

any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State[.]”

11. Personal Jurisdiction and Venue are proper in this Court under *Babcock v. Whatmore*, 707 So.2d 702, 704 (Fla.1998) as class members in this District and in the State of Florida received unwanted text messages.

FACTUAL ALLEGATIONS AS TO PLAINTIFF MENIN

12. Within the time frame relevant to this action, Defendant caused multiple text messages to be transmitted to Plaintiff Menin’s cellular telephone number ending in 7065 (“7065 Number”)



13. Plaintiff Menin requested on more than one occasion that Defendant stop contacting her via text message but Defendant continues ignore the STOP request.

14. Plaintiff Menin first wrote stop on June 23, 2023 and Defendant acknowledged the request that same day.

15. Despite the request, Defendant sent Plaintiff Menin additional text message solicitations on June 30, 2023, July 7, 2023 and July 14, 2023.

16. As demonstrated by the above screenshots, the purpose of Defendant's text messages was to solicit the sale of consumer goods and/or services.

17. As demonstrated by the above screenshots, the purpose of Defendant's text messages was to advertise, promote, and/or market Defendant's property, goods, and/or services.

18. As demonstrated by the above screenshots, Defendant does not honor consumer requests to opt-out of text message solicitations. Indeed, Plaintiff attempted to opt-out of Defendant's text message solicitations by responding, but Defendant continued to text message Plaintiff. Notably, many of the text messages sent by Defendant contained no instructions on how to opt-out, and Plaintiff was left helpless in attempting to stop the solicitations.

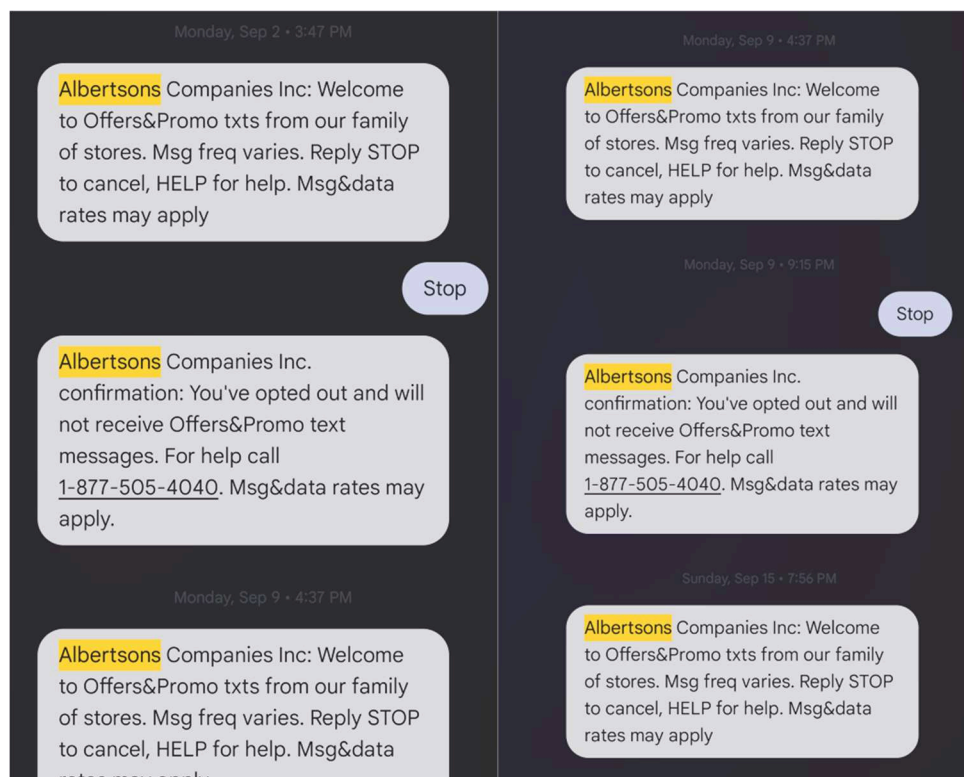
19. Defendant sent at least two solicitations after Plaintiff Menin's initial opt-out request. Indeed, the hyperlink in the text message sent by Defendant immediately after Plaintiff's "no" request was sent for the purpose of marketing and advertising Defendant's goods and services as reflected by the following screenshot of that link showing that the visitor would have been presented with an advertisement immediately upon landing on the website.

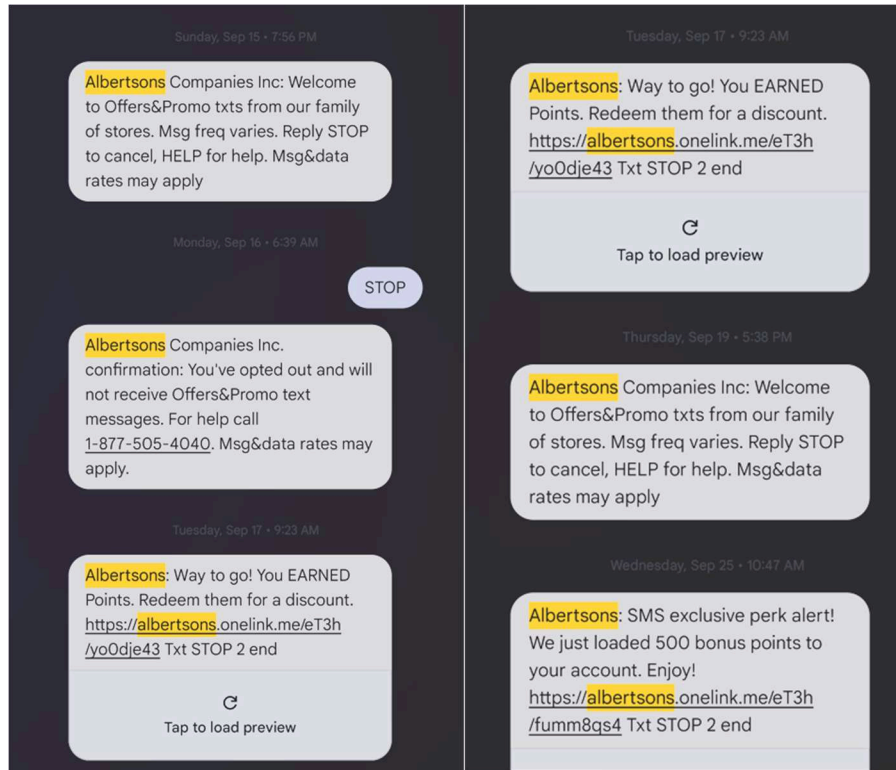
20. Plaintiff Menin is the regular user of the telephone number that received the above telephonic sales calls.

21. Plaintiff Menin utilizes the cellular telephone number for personal purposes and the number is Plaintiff's residential telephone line.

FACTUAL ALLEGATIONS AS TO PLAINTIFF OTTE

22. Within the time frame relevant to this action, Defendant caused multiple text messages to be transmitted to Plaintiff Otte's cellular telephone number ending in 9241 ("9241 Number").





Wednesday, Oct 2 • 2:32 PM



Subject: Happy Birthday from Albertsons!
Albertsons: Happy Birthday! To celebrate, here's our gift to you: earn 500 Points on your next purchase. <http://albertsons.smsurl.co/5XsgtCq> Txt STOP to end, HELP for help. Msg&DataRatesMayApply

Tap to load preview

Wednesday, Oct 2 • 6:56 PM

Stop

Albertsons Companies Inc. confirmation: You've opted out and will not receive Offers&Promo text messages. For help call 1-877-505-4040. Msg&data rates may apply.

6:56 PM

23. Plaintiff Otte requested that Defendant to stop contacting her on September 2, 2024, but Defendant continued to send her text messages on September 9, 2024, September 16, 2024, September 25, 2024 and October 2, 2024.

24. As demonstrated by the above screenshots, the purpose of Defendant's text messages was to solicit the sale of consumer goods and/or services.

25. As demonstrated by the above screenshots, the purpose of Defendant's text messages was to solicit the sale of consumer goods and/or services.

26. As demonstrated by the above screenshots, the purpose of Defendant's text messages was to advertise, promote, and/or market Defendant's property, goods, and/or services.

27. As demonstrated by the above screenshots, Defendant does not honor consumer requests to opt-out of text message advertisements.

28. Plaintiff Otte attempted to opt-out of Defendant's text message solicitations by responding to Defendant's messages with the word "stop", but instead of honoring the request, Defendant continued its solicitation efforts.

29. Defendant sent at least two text marketing messages after Plaintiff's initial opt-out request.

30. Plaintiff is the regular user of the 9421 Number that received the above text messages and the 9421 Number has been registered on the National Do Not Call Registry since October 6, 2015.

31. Plaintiff utilizes the cellular telephone number that received Defendant's calls for personal purposes and the number is Plaintiff's residential telephone line and primary means of reaching Plaintiff at home.

FACTUAL ALLEGATIONS AT TO PLAINTIFF SCHOFIELD

32. Plaintiff Schofield is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(39).

33. Plaintiff Schofield’s cellular telephone number ends in 5555 (“5555 Number”).

34. Plaintiff Schofield personally listed her telephone number on the National Do-Not-Call Registry on August 14, 2006, and has not removed it from the Registry since that time.

35. Plaintiff Schofield uses this telephone number for personal, residential, and household purposes.

36. Plaintiff Schofield’s telephone number is not associated with any business, nor does Plaintiff use the number for business purposes.

37. In or about October 2024, Plaintiff Schofield began receiving text message solicitations to her 5555 Number from Defendant.

38. These text messages came from short code 48687.

39. The messages solicited Defendant’s offers and promotions.

40. For example, on November 24, 2024, at 2:19 p.m., Plaintiff Schofield received the following text message solicitation from Defendant on her 5555 Number:

Safeway: Create your health profile & we’ll say thanks with a \$10
grocery coupon! Terms apply.
<https://safeway.onelink.me/kO9I/aoxr17w4> Txt STOP to end

41. On November 24, 2024, Plaintiff Schofield replied with the instruction to STOP as advised in Defendant’s solicitation text message.

42. On November 24, 2024, at 4:45 p.m., Defendant sent a text message confirming that it had received Plaintiff’s stop instruction and further stating that Plaintiff Schofield would not receive any further texts from Defendant.

43. This text message came from short code 27640.

44. That message reads as follows:

Albertsons Companies Inc. confirmation: You've opted out and will not receive Offers&Promo text messages. For help call 1-877-505-4040. Msg&data rates may apply.

45. Despite confirming Plaintiff Schofield's stop request and stating that Plaintiff Schofield would not receive any further text messages, Plaintiff Schofield received the following text message solicitation on November 25, 2024, at 7:00 p.m. from Defendant:

There's still time to gobble up savings at Safeway. Save big on the perfect turkey before the family arrives. Check out your deals HERE <https://safeway.comsmsurl.co/HkeEv14> Txt STOP to send, HELP for help. Msg&DataRatesMayApply

46. After receiving this text message solicitation, on November 25, 2024, Plaintiff Schofield again texted STOP as instructed in Defendant's text.

47. On November 25, 2025, Plaintiff Schofield again received the following opt out confirmation:

You've opted out and will not receive Offers&Promo text messages. For help call 1-877-505-4040. Msg&data rates may apply.

48. Despite these opt out requests and confirmations, Plaintiff Schofield continued to receive text message solicitations from Defendant.

49. In fact, Plaintiff Schofield texted STOP instructions at least eight (8) times.

50. After her initial STOP instruction, Plaintiff Schofield received at least fourteen (14) text message solicitations from Defendant.

51. Plaintiff Schofield did not provide prior express consent to receive text message solicitations on her cellular phone from, or on behalf of, Defendant.

52. Plaintiff Schofield was annoyed and harassed by the repeated spam solicitation text messages from Defendant and Defendant's noncompliance with her stop requests.

53. As demonstrated by the above messages, the purpose of Defendant's text messages was to solicit the sale of consumer goods and/or services.

54. As demonstrated by the above messages, the purpose of Defendant's text messages was to advertise, promote, and/or market Defendant's property, goods, and/or services.

55. As demonstrated by the above messages, Defendant does not honor consumer requests to opt-out of text message solicitations.

56. Plaintiff Schofield attempted to opt-out of Defendant's text message solicitations by responding, but Defendant continued to text message Plaintiff.

57. This was even after Defendant had confirmed Plaintiff Schofield's opt-out request.

58. Defendant's refusal to honor Plaintiff Schofield's opt-out request demonstrates that Defendant has not instituted procedures for maintaining a list of persons who request not to receive text messages from Defendant. The precise details regarding its lack of requisite policies and procedures are solely within Defendant's knowledge and control.

59. Defendant's refusal to honor Plaintiff Schofield's opt-out request demonstrates that Defendant does not provide training to its personnel engaged in telemarketing. The precise details regarding its lack of training are solely within Defendant's knowledge and control.

60. Defendant's refusal to honor Plaintiff Schofield's opt-out request demonstrates that Defendant does not maintain a standalone do-not-call list. The precise details regarding its lack of training are solely within Defendant's knowledge and control.

FACTUAL ALLEGATIONS AT TO PLAINTIFF KAMEL

61. Plaintiff Kamel is the primary and regular user of the cellular telephone number ending in 0635 (the “0635 Number”).

62. Plaintiff Kamel uses the 0635 Number as his residential telephone line.

63. Plaintiff Kamel has had the 0635 Number since 2004.

64. Plaintiff Kamel uses the 0635 Number to regularly communicate with friends and family.

65. Plaintiff Kamel stores all of his family’s and friends’ contact on his phone associated with the 0635 Number.

66. Plaintiff Kamel’s Number is part of a family plan which includes three other telephone numbers.

67. During the time frame relevant to this complaint, Defendant has caused multiple text messages to be transmitted to the 0635 Number.

68. Defendant obtained Plaintiff Kamel’s phone number when he was shopping at one of Defendant’s stores by asking Plaintiff for his phone number while he was paying for the items he was purchasing.

69. On more than one occasion, the first of which was on or around December 5, 2023, Plaintiff Kamel asked Defendant to stop texting him but Defendant has continued to send him text messages, the latest of which was on January 16, 2024.

FACTUAL ALLEGATIONS AS TO ALL PLAINTIFFS

70. Defendant did not maintain the required procedures for handling and processing opt-out requests prior to the initiation of the violative text messages it sent to Plaintiffs as reflected

by the fact that Plaintiffs made opt-out requests and that those requests were never processed; they were ignored by Defendant and its employees and Defendant continued to send text messages.

71. Upon information and belief, Defendant has access to outbound transmission reports for all text messages sent advertising/promoting its services and goods. These reports show the dates, times, target telephone numbers, and content of each message sent to Plaintiffs and Class members. Defendant also has access to text message logs showing Plaintiffs' and Class members' inbound opt-out requests.

72. Plaintiffs and Class Members revoked any consent they may have previously provided to Defendant by replying with a "STOP" or similar opt-out instruction in response to Defendant's text messages.

73. Defendant's text messages caused Plaintiffs and Class members harm, including statutory damages, inconvenience, invasion of privacy, aggravation, annoyance, and violation of their statutory privacy rights.

74. Upon information and belief, Defendant maintains and/or has access to outbound transmission reports for all text messages sent advertising/promoting its services and goods. These reports show the dates, times, target telephone numbers, and content of each message sent to Plaintiffs and the Class members.

75. Defendant's failure to honor opt-out requests demonstrates that Defendant does not 1) maintain written policies and procedures regarding its text messaging marketing; (2) provide training to its personnel engaged in telemarketing; and/or (3) maintain a standalone do-not-call list.

76. Defendant's failure to (1) maintain the required written policies and procedures, (2) provide training to its personnel engaged in telemarketing, (3) maintain a standalone do-not-call

list, and (4) honor consumer opt-out requests caused Plaintiffs and the class members harm as they continued to receive text message solicitations after asking for those messages to stop.

77. Defendant's telephonic sales calls caused Plaintiffs and the Class members harm, including statutory damages, inconvenience, invasion of privacy, aggravation, annoyance, and violation of their statutory privacy rights.

78. Upon information and belief, Defendant maintains and/or has access to outbound transmission reports for all text messages sent advertising/promoting its services and goods. These reports show the dates, times, target telephone numbers, and content of each message sent to Plaintiff and the Class members.

79. Defendant's failure to honor opt-out requests demonstrates that Defendant does not (1) maintain written policies and procedures regarding its text messaging marketing; (2) provide training to its personnel engaged in telemarketing; and/or (3) maintain a standalone do-not-call list.

80. Plaintiffs and the Class Members terminated any business relationship they may have previously had with Defendant by replying with a "stop" or similar opt-out instruction in response to Defendant's text messages.

81. Defendant's text message spam caused Plaintiffs and the Class members cognizable harm, including violations of their statutory rights, trespass, annoyance, nuisance, invasion of their privacy, and intrusion upon seclusion. Defendant's text messages also occupied storage space on Plaintiff's and the Class members' telephones. Defendant's text messages also inconvenienced Plaintiffs and the Class members and caused disruption to their daily lives.

CLASS REPRESENTATION ALLEGATIONS

82. This action is brought as a Class Action under Florida Rule of Civil Procedure 1.220. Plaintiffs propose the following class, defined as follows, and subject to modification by the Court as required:

All persons within the United States who, from June 1, 2023 forward who (1) received two or more unsolicited text messages and/or telemarketing call from Albertsons Companies, Inc., Star Markets Company, Inc., Safeway, Inc. and their affiliates and subsidiaries and anyone acting on Defendant's behalf, (2) other than a message confirming an opt-out request, (3) within any 12-month period, (3) for the purpose of selling Defendant's products or services, (4) after making a request to Defendant not to receive further text messages, including by texting the word "Stop" or similar opt-out instructions in response to Defendant's text messages.

83. Plaintiffs fall within the class definition and are member of both Class. Excluded from the class are Defendants and any entity in which Defendants have a controlling interest, Defendants' agents and employees, Plaintiff's attorneys and their employees, the Judge to whom this action is assigned and any member of the Judge's staff and immediate family, and claims for personal injury, wrongful death, and/or emotional distress.

84. The Class are ascertainable. It is defined based on objective criteria. Also, its members can readily be identified based in whole or in part on information within Defendant's possession, custody, or control, as well as from records of the entities that processed the card transactions at issue, and records of the banks that issued the credit/debit cards.

85. Defendant, throughout each of its retail locations, print numerous credit and debit card receipts each day. Plaintiff does not know the exact number of members of the Class but is informed and believes that there are at least 50 individuals that fall within the class definitions given Defendant's use of robotexts to solicit consumers and refusal to honor stop requests. The

members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

86. The exact number and identities of the members of the Class are unknown at this time and can only be ascertained through discovery. Identification of Class members is a matter capable of ministerial determination from Defendant's call records.

87. There are common questions of law and fact that predominate over any questions affecting only the individual members of the class. The wrongs alleged against Defendant are statutory in nature and common to each and every member of the putative class. There are numerous questions of law and fact common to members of the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the members of the Class are:

- a) Whether Defendant sent text messages to Plaintiffs and Class members;
- b) Whether Defendant continued to send text message solicitations after opt-out requests;
- c) Whether Defendant failed to honor Plaintiffs' and Class members' opt-out requests;
- d) Whether Defendant implemented the requisite training of personnel under section 64.1200;
- e) Whether Defendant maintains an internal do-not-call list and instructs its employees on how to use the list;
- f) Whether Defendant text messaged individuals who had registered their telephone numbers on the National Do Not Call Registry;
- g) Whether Defendant maintains the required policies and procedures under section 64.1200; and

h) Whether Defendant is liable for damages, and the amount of such damages.

88. The common questions in this case are capable of having common answers, and Plaintiffs and Class members will have identical claims capable of being efficiently adjudicated and administered in this case. Plaintiffs' claims are typical of the claims of Class members, as they are all based on the same factual and legal theories.

89. Plaintiffs will fairly and adequately represent and protect the interests of the class in that Plaintiff has no interests antagonistic to any member of the class, and have engaged competent class counsel.

90. Defendants' defenses are and will be typical of and the same or identical for each of the members of the Class and will be based on the same legal and factual theories. There are no unique defenses to any of the Class Members' claims.

91. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

92. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another

may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

COUNT I

Violation of 47 U.S.C. § 227(c) and 64.1200(c) (Plaintiff and the DNC Class)

89. Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1 through 92 as if fully set forth herein.

90. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides in pertinent part that "[n]o person or entity shall initiate any telephone solicitation" to "[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government."

91. Per 47 C.F.R. § 64.1200(e), § 64.1200(c) is "applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers."

92. Any "person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may" may bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c).

93. Plaintiffs and DNC Class Members revoked any consent they may have previously provided Defendant by replying with a "stop" or similar opt-out instruction in response to Defendant's text messages.

94. Plaintiffs and DNC Class Members terminated any business relationship they may have previously had with Defendant by replying with a "stop" or similar opt-out instruction in

response to Defendant's text messages. *See* 47 C.F.R. § 64.1200(f)(5)(i). (A consumer's "seller-specific do-not-call request * * * terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.")

95. Defendant violated 47 C.F.R. § 64.1200(c) by initiating telephone solicitations to telephone subscribers such as Plaintiff and DNC Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government.

96. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiffs and DNC Class members received more than one text message in a 12-month period from Defendant in violation of 47 C.F.R. § 64.1200.

97. As a result of Defendant's conduct as alleged herein, Plaintiff and DNC Class members suffered actual damages and, under section 47 U.S.C. § 227(c), are entitled receive up to \$500 in damages for such violations of 47 C.F.R. § 64.1200. To the extent Defendant's misconduct is determined to be willful and knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages recoverable by the members of the DNC Class.

COUNT II

VIOLATION OF 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200(d) (Plaintiffs and the IDNC Class)

98. Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1 through 92 as if fully set forth herein.

99. In pertinent part, 47 C.F.R. § 64.1200(d) provides:

No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who

request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) Written policy. Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request. A person or entity making a call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a telemarketing call is made or an affiliated entity.

100. Under 47 C.F.R § 64.1200(e), the rules set forth in 47 C.F.R. § 64.1200(d) are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers.

101. Plaintiffs and IDNC Class Members are residential telephone subscribers who received more than one text message made for purposes of telemarketing or solicitation purposes from Defendant, who has failed to implement the requisite procedures and personnel training as demonstrated by its repeated failure to honor opt-out requests.

102. Plaintiffs and IDNC Class members made requests to Defendant not to receive texts from Defendant.

103. Plaintiffs and IDNC Class Members revoked any consent they may have previously provided Defendant by replying with a “stop” or similar opt-out instruction in response to Defendant’s text messages.

104. Plaintiffs and IDNC Class Members terminated any business relationship they may have previously had with Defendant by replying with a “stop” or similar opt-out instruction in response to Defendant’s text messages. See 47 C.F.R. § 64.1200(f)(5)(i). (A consumer's “seller-specific do-not-call request * * * terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.”)

105. Plaintiffs and IDNC Class Members revoked any consent they may have provided Defendant by responding with “stop” or similar opt-out instructions.

106. Defendant continued to text message Plaintiffs and IDNC Class Members to harass them into making purchases from Defendant.

107. Defendant failed to honor Plaintiffs’ and IDNC Class members’ opt-out requests.

108. Defendant’s refusal to honor opt-out requests is indicative of Defendant’s failure to implement a written policy for maintaining a do-not-call list and to train its personnel engaged in telemarketing on the existence and use of the do-not-call-list.

109. Plaintiffs and IDNC Class members are informed and believe that Defendant has not instituted procedures for maintaining a list of persons who request not to receive telemarketing calls or text messages.

110. Plaintiffs and IDNC Class members are informed and believe that Defendant does not have a written policy, available upon demand, for maintaining a do-not-call list.

111. Plaintiffs and IDNC Class members are informed and believe that Defendant does not train its personnel engaged in any aspect of telemarketing in the existence and use of the do-not-call list.

112. The details and specific facts regarding Defendant's failure to maintain the required policies and procedures, as well as personnel training, are solely within Defendant's knowledge and possession.

113. Defendant has violated 47 C.F.R. § 64.1200(d) by failing to honor opt-out requests, failing to maintain the required policies and procedures, and failing to train its personnel engaged in telemarketing.

114. Pursuant to section 227(c)(5) of the TCPA, Plaintiffs and IDNC Class members are entitled to an award of \$500.00 in statutory damages, for each and every negligent violation.

115. As a result of Defendant's knowing or willful conduct, Plaintiff and IDNC Class members are entitled to an award of \$1,500.00 in statutory damages per violation.

COUNT III

VIOLATION OF FLA. STAT. § 501.059(5) (On Behalf of the Class)

27. Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1 through 92 as if fully set forth herein.

28. In pertinent part, the FTSA provides:

A telephone solicitor or other person may not initiate an outbound telephone call, text message, or voicemail transmission to a consumer, business, or donor or potential donor who has previously communicated to the telephone solicitor or other person that he or she does not wish to receive an outbound telephone call, text message, or voicemail transmission:

(a) Made by or on behalf of the seller whose goods or services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

Fla. Stat. § 501.059(5).

29. “‘Telephone solicitor’ means a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices.” Fla. Stat. § 501.059(1)(i).

30. Defendant is a telephone solicitor as defined under the FTSA.

31. Class Members are consumers who received one or more text messages regarding Defendant’s goods and services after they communicated to Defendant that they did not wish to receive Defendant’s text messages.

32. Class members made requests to Defendant not to receive texts from Defendant.

33. Defendant continued to text message Class Members to harass them into making purchases from Defendant.

34. Defendant failed to honor Class members’ opt-out requests.

35. As a result of Defendant’s conduct, and pursuant to § 501.059(10)(a) of the FTSA, Plaintiff and Class members were harmed and are each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the Class members are also entitled to an injunction against future calls. Id.

36. Plaintiff requests for this Court to enter an Order granting the relief outlined in the Prayer for Relief below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for the following relief:

- a) An order certifying this case as a class action on behalf of the Class as defined above, and appointing Plaintiff as the representative of the Class and Plaintiff's counsel as Class Counsel;
- b) An award of statutory damages for Plaintiff and each member of the Class as applicable under the TCPA and FTSA;
- c) An order declaring that Defendant's actions, as set out above, violate the TCPA and FTSA;
- d) An injunction requiring Defendant to comply with 47 C.F.R. § 64.1200(d) by (1) maintaining the required written policies; (2) providing training to their personnel engaged in telemarketing; and (3) maintaining a do-not-call list
- e) Such further and other relief as the Court deems necessary.

Dated: April 21, 2025

HIRALDO P.A.

/s/ Manuel S. Hiraldo

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